

**REMARKS**

**Claims 1-4, 6 and 35**

The Examiner has rejected claims 1-4 and 6 as anticipated by U.S. Patent No. 5,445,273 to Apps ("Apps '273"), obvious over Prior Art Figure 1 and sections of the specification that describe prior art (hereinafter, collectively "Prior Art Figure 1"), obvious over the Apps '532 patent in view of Prior Art Figure 1, and obvious over Wise. The Examiner has also rejected claim 35 as obvious over Prior Art Figure 1 and over Apps '532 patent in view of Prior Art Figure 1.

Contrary to the Examiner's indications, items 103, 105 and 110 of Apps '273 are not "a top surface of the side wall" as required by claim 1. The Examiner is referring to the top surface of the interior corner rib 104 and the corner slot bottom surface 103; however, the interior corner rib 104 is not a side wall. Clearly, the "top surface of the side wall" in Apps '273 is the top of the band 30, as shown in Figure 10. However, the top of band 30 would not contact an outer peripheral support surface of a like crate stacked thereon, as required by claim 1.

The Examiner's reference to the corner posts 100 as the "portion . . . formed to reduce the dimension of the crate opening" contradicts the Examiner's position. As claimed, the "portion" must be a "portion of an inner surface of the side wall." In Apps '273, the corner posts 100 only reduce the dimension of the crate opening relative to the *band 30*; however, this requires (as Applicant argued above) that the band 30 is part of the side wall in Apps '273, which in turn would dictate that the top (i.e. "uppermost") surface of the side wall is the top (uppermost) surface of band 30.

The Examiner also indicates that the first mentioned outer peripheral support surface is not required to be the same as the second mentioned outer peripheral support surface. This is incorrect. Claim 1 states that the top surface of the side wall "would contact an outer peripheral support surface of a like crate stacked thereon." Thus, the outer peripheral support surface of the "like crate" must be the same outer peripheral support surface recited in line 7 of Claim 1, but on the "like" crate. However, Applicant has amended Claim 1 to recite "the" outer peripheral support surface, to further clarify that they are the same.

The Examiner's application of the claim terms to these references is contrary to the ordinary meanings of these claim terms, and even less tenable with reference to claims 2 and 4, which each depend from claim 1. Claim 2 specifies that the side wall is joined to another side wall to form a corner, and the at least one selected area comprises the corner. The corner rib 104 of Apps '273 is not joined to another corner rib 104 to form a corner, other than by band 30. Therefore, again, the band 30 is part of the side wall and the top surface of the side wall is the top surface of the band 30. Therefore, claim 2 is not anticipated by Apps '273.

Claim 4 specifies a plurality of side walls formed as an open-top box having four corners. However, if the corner ribs 104 of Apps '273 are the side walls, they do not form an open top box having four corners, since the four corner ribs do not meet or form a box. Therefore, claim 4 is not anticipated by Apps '273.

The corner rib 104 (again, *if* the corner rib 104 is to be the side wall of claim 1) does not taper outwardly from a vertical plane as it extends upwardly from the bottom surface or include a selected area formed without taper or with reduced taper. Therefore, claims 5 and 6 are not anticipated by Apps '273.

The Examiner argues that Prior Art Figure 1 discloses the invention except the stacking of two crates in his obviousness rejection of claims 1-4, 6, and 35. First, Applicant notes that none of claims 1-4, or 35 require the actual stacking of two crates. However, in any event, Applicant does not agree that Prior Art Figure 1 discloses the claimed invention. Prior Art Figure 1 does not include a portion of the inner surface of the side wall formed to reduce the dimension of the crate opening in at least one selected area so as to provide a tighter fit with the drag rail of a like crate. Applicant has clarified the claims by specifying that the opening and the selected area are defined at the same distance from the floor.

Even under the Examiner's current interpretation that the selected area reduces the dimension of the opening as the drag rail is fully inserted into the opening, and even ignoring the proposed amendment of claim 1, Prior Art Figure 1 does not disclose that the at least one selected area comprises an upper edge of the side wall, as required by claim 3. The upper edge in Prior Art Figure 1 is the narrowest part of the side wall and therefore does not "reduce" a dimension of the opening relative to any other part of the side wall. Therefore, even without the proposed amendment to claim 1, claim 3 is patentable.

Prior Art Figure 1 does not disclose that the at least one selected area comprises an upper portion of each side wall at each corner, as required by claim 4. Nor does Prior Art Figure 1 disclose that the at least one selected area comprises a portion of the inner surface of the side wall formed without taper or with reduced taper, as required by claims 5 and 6.

The Examiner has rejected claims 1-6 and 35 as obvious over Apps '532 in view of Prior Art Figure 1. First, it would not be obvious to modify Apps '532 to include a taper of the upper portion of the side wall because the bottom of the side

wall in Apps '532 fits snugly within the side wall of the lower tray, as shown in Figure 7. Further, there are other elements that would still be missing from Apps '532. For example, as can be seen in Figures 1 and 7, the side wall of the '532 patent is not "formed so that at least a portion of an opening in the crate has a larger dimension than the bottom surface." Rather, the dimension of the opening is constant and the same as the bottom surface.

Apps '532 does not include a "drag rail formed on an underside portion of the bottom surface" as required by claim 1 and claim 35. Rather, the bottom surface of Apps '532 is flat.

Even under the Examiner's interpretation (and prior to this amendment of claim 1), the bottom surface (what the Examiner calls the "drag rail") of the upper crate would still be adjacent a tapered portion of the lower crate even after the upper crate is lowered into the fully stacked position. Thus, there would be no "selected area...formed *without* taper...to provide a tighter fit with a drag rail." Therefore, claim 5 is not anticipated or made obvious.

The Examiner has rejected claims 1-6 as obvious over Wise. Although the Applicant provided a detailed analysis of Wise relative to the claims, the Examiner has provided no explanation in either of his Office Actions for the rejection over Wise. Wise does not disclose a drag rail on an under side portion of the bottom surface, as required by claim 1. There is nothing on the underside portion of the bottom surface of the container in Wise that could reasonably be called a rail or a drag rail as required by claim 1. Further, the containers in Wise nest within one another until stopped by the corner nesting steps 47, 49, 51 and 53 resting in the bottom edges 63, 65, 67 and 69. Therefore, these side walls in Wise do not have a top surface of the side wall that would contact an outer peripheral support surface of a

like container. The containers of Wise do not rest on a top surface of a side wall of a lower like container.

**Claims 7, 9-15 and 30**

The Examiner has rejected claims 7, 9-15 and 30 as anticipated by Apps '273 and Apps '532.

The '273 patent does not disclose a side wall positioned over the drag rail. The outer peripheral rail in the '273 patent is not a drag rail, because it does not contact the floor. The outer peripheral rail in the '273 patent is actually positioned upward of the bottom surface of the tray. Therefore, the '273 patent does not anticipate claim 7. To further clarify this point, Applicant has amended claim 7 to recite that the drag rail protrudes from the underside portion of the bottom surface and that the drag rail includes a lowermost surface of the crate. This further clarifies that the outer peripheral rail in the '273 patent is not a drag rail.

Referring to Figure 10 of the '273 patent, the corner post 100 in the '273 patent is not contoured at a lower surface of the corner so as to extend over the outer peripheral rail. Therefore, even if claim 7 were anticipated, claim 9 is independently patentable.

The corner post 100 does not include an inwardly extending taper as required by claim 10.

The Apps '273 patent clearly does not disclose that the at least one selected area comprises an upper edge area of the side wall, even under the Examiner's interpretation. Therefore, claim 14 is independently patentable.

The Apps '273 patent clearly does not disclose that the at least one selected area comprises an upper portion of each side wall at each corner as specified by claim 15. Therefore, claim 15 is independently patentable.

Again, Applicant disputes the Examiner's interpretation of the term "drag rail" to cover the outer peripheral rail in Apps '273. However, claim 30 further defines the drag rail, such that it could not conceivably cover the Apps '273 patent. For example, claim 30 specifies that the drag rail protrude downward from the underside portion of the bottom surface. The outer peripheral rail of Apps '273 does not protrude downward from the underside portion of the bottom surface, but rather is disposed upward of the bottom surface. Further, claim 30 specifies a contact surface on a lower edge of the side wall outward of the drag rail, the contact surface dimensioned to rest on a top surface of a side wall of an identical crate. As explained above, in Apps '273, the tray does not rest on a top surface of a side wall of an identical crate, but rather nests within the side walls of identical crates. Therefore, claim 30 is independently patentable.

The Examiner has rejected claims 7, 9-15 and 30 as anticipated by Apps '532. As can be seen in Figure 2 of Apps '532, the bottom surface of the tray would rest directly on the floor. There is no drag rail formed on the underside portion of the bottom surface. Under the ordinary meaning of the term "drag rail" as used in the art and as used in the specification of the present application, the '532 patent does not disclose a drag rail.

Applicant's amendment to claim 7 even more clearly distinguishes Apps '532. Apps '532 does not disclose a drag rail which protrudes from the underside portion of the bottom surface. There is no rail in Apps '532 that protrudes from the underside portion of the bottom surface.

*certain portions  
of bottom surface  
extend lower than  
other, these portions  
which extend lower  
form drag rails*

**Claims 8 and 31**

The Examiner has rejected claims 8 and 31 as obvious over Apps '273 or Apps '532 stating that "rounded inside corners between the bottom surface and side wall surface are generally well known . . . ." However, the claims require a "variable radius blend." A corner that was simply "rounded" would not be a "variable radius blend."

The claims also specify that the variable radius blend position a portion of the side wall over the drag rail. As explained above, there is no drag rail in either reference. Even putting the disputed definition of "drag rail" aside, there would be no reason to add a variable radius blend to position a portion of the side wall over what the Examiner calls a drag rail in each of these references.

As explained in Applicant's Background of the Invention and Summary of the Invention sections, the purpose of extending a portion of the side wall over the drag rail is to avoid the "fulcrum effect" on the bottom crate of a stack of crates. The weight of all of the stacked crates is transferred along all of the side walls to the side walls of the bottom crate resting on the floor on its drag rail. In the crates such as shown in Prior Art Figure 1, the side wall did not extend over the drag rail and thus produced the fulcrum effect that increased the stress on the side wall/bottom wall intersection. By extending the side wall over the drag rail in the present invention, the weight is transferred directly to the drag rail and to the floor.

In Apps '273, that which the Examiner calls a "drag rail" does not contact the floor. Therefore, there would be no benefit (and thus, no motivation) to extending the side wall over the rail and claims 8 and 31 are patentable.

Nor would there be any motivation to extend the side wall over what the Examiner calls the drag rail in Apps '532. First, the upper tray would rest on the

posts 79 and transfer weight directly to the floor 34. Additionally, since there is no “drag rail formed on the underside portion of the bottom surface,” the underside surface of the floor 34 is flat and there would be no “fulcrum effect.” Therefore, there would be no motivation to add a “variable radius blend” or position a portion of the side wall over the drag rail. Therefore claims 8 and 31 are not obvious.

### **Claim 25**

The Examiner has rejected claim 25 as anticipated by Apps ‘273, obvious over Prior Art Figure 1, obvious over Apps ‘532 in view of Prior Art Figure 1 and obvious over Wise.

Claim 25 is not anticipated by Apps ‘273 because, wherever the Examiner is finding the “side wall” in Apps ‘273, the corner post 100 is not a “portion of the inner surface of the side wall angled less outwardly” than “an inner surface of the side wall.” The corner post 100 is not angled less outwardly than any other part of the side wall in Apps ‘273.

As Applicant described in the Background Art Section of the Application, Prior Art Figure 1 shows an inner surface angled outwardly, but does not include a portion angled less outwardly that would be adjacent a drag rail of a like crate stacked thereon. A drag rail of a like crate stacked on the crate of Prior Art Figure 1 would not extend past the tapered portion of the upper area of the side wall in Prior Art Figure 1. The entire tapered portion has a constant angle outwardly and thus no “portion angled less outwardly” as required by claim 25.

The inner surface of the side wall in Apps ‘532 is not angled outwardly, nor would there be any motivation for doing so. Additionally, for the reasons explained above, Prior Art Figure 1 does not disclose claim 25 either. Therefore, even if Apps



'532 were modified in accordance with Prior Art Figure 1, claim 25 would not be met.

Again, the Examiner has given no explanation for his rejection over Wise. Thus, Applicant would have to iteratively apply hypothetical element-by-element analyses of Wise to the claims and point out where they fail to meet the elements of claim 25. Although Applicant has argued against a few guesses as to the Examiner's reasoning, it becomes very burdensome for claim 25. Applicant does not know where the Examiner is finding a "side wall" in Wise, but there is no such side wall in Wise that would meet all of the limitations of claim 25.

#### **Claim 27**

The Examiner has rejected claim 27 as anticipated by Apps '273, obvious over Prior Art Figure 1, and obvious over Wise.

Claim 27 is not anticipated by Apps '273. Claim 27 specifies that side walls of identical stacked crates would not nest within the other. As shown in Figure 11 of Apps '273, the side walls of identical stacked crates do nest within one another. Therefore, claim 27 is independently patentable.

Similarly, the side walls in Wise nest within one another when stacked. Therefore, claim 27 is not made obvious by Wise.

Prior Art Figure 1 does not show the invention of claim 27 for the reasons stated above with respect to claim 25.

#### **Claim 32**

The Examiner has rejected claim 32 as anticipated by Apps '273 or Apps '532, obvious over Prior Art Figure 1, and obvious over Wise.

Apps '273 does not disclose a drag rail, as explained above. Nor would a first crate be supported on a top surface of the side wall of a second crate. As explained above, the trays in Apps '273 are not supported on a top surface of a side wall.

Apps '532 does not disclose a drag rail, as explained above. Apps '532 does not disclose "an inner surface of the side wall moving outwardly from a vertical plane as the side wall extends upwardly"; rather, the inner surface of the side wall is straight. Additionally, the posts 79 cannot be the "selected area" because they are not positioned adjacent the rails at the bottom periphery of the upper crate (what the Examiner calls the "drag rail").

Applicant disagrees that Prior Art Figure 1 shows the invention of claim 32, but has amended claim 32 to clarify the position of the "selected area."

Wise does not disclose a "drag rail," nor is one container in Wise supported on the top surface of a side wall of another container, as explained above.

### CONCLUSION

Reconsideration of the application as amended is requested.

Respectfully submitted,



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IN THE CLAIMS

1. (TWICE AMENDED) A stackable crate for holding and transporting products comprising:

a side wall integrally formed with a bottom surface, the side wall formed so that at least a portion of an opening in the crate at a first distance from the bottom surface has a larger dimension than the bottom surface; and

a drag <sup>16</sup> rail formed on an underside portion of the bottom surface and positioned inward of an outer peripheral <sup>114</sup> support surface of the crate, the side wall formed so that a top surface of the side wall would contact [an] the outer peripheral support surface of a like crate stacked thereon,

wherein a portion of an inner surface of the side wall at the first distance from the bottom surface is formed to reduce the dimension of the crate opening in at least one selected area so as to provide a tighter fit with a drag rail of the like crate stacked thereon.

7. (AMENDED) A crate for holding and transporting products comprising:

a side wall integrally formed with a bottom surface; and

a drag rail [formed on] protruding from an underside portion of the bottom surface, the drag rail including a drag surface that is the lowermost surface of the crate, wherein an inner surface of the side wall is formed to position at least a portion of the side wall over the drag rail.

30. (AMENDED) The crate of claim 7 wherein the drag rail protrudes downward from the underside portion of the bottom surface inward of the outer edge of the crate, the side wall meeting the bottom surface at a lower corner of the crate, [the drag rail protruding downward from the underside of the bottom surface at the lower corner], the side wall further including a contact surface on a lower edge of the side wall [and] adjacent to and outward of the drag rail at the lower corner, the contact surface dimensioned so as to rest on a top surface of a side wall of an identical crate.

32. (AMENDED) First and second identical stacked crates for holding and transporting products each comprising:

a side wall integrally formed with a bottom surface, an inner surface of the side wall moving outwardly from a vertical plane as the side wall extends upwardly from the bottom surface to enlarge [a top] an opening of the crate at a first distance from the bottom surface, at least one selected area of the side wall at the first distance from the bottom surface comprising a portion of the inner surface of the side wall formed to reduce the dimension of the crate opening at the at least one selected area;

a drag rail extending from an underside portion of the bottom surface, the drag rail positioned inward of an outer peripheral edge of the crate; and

the first crate supported on a top surface of the side wall of the second crate with the drag rail of the first crate positioned inward of the side wall and the at least one selected area of the second crate so as to provide a tighter fit between the drag rail of the first crate and the at least one selected area of the second crate.

35. (AMENDED) A stackable crate for holding and transporting products comprising:

a plurality of side walls generally perpendicular to and integrally formed with a bottom surface, an inner surface of each of the side walls moving outwardly from a vertical plane as the side wall extends upwardly from the bottom surface to enlarge an upper opening of the crate at a first distance from the bottom surface, at least one portion of an upper edge of each of the side walls being vertically aligned with at least one portion of a lower edge of the each of the side walls; and

a drag rail formed on an underside portion of the bottom surface and positioned inward of an outer periphery of the lower edges of the plurality of side walls,

wherein a portion of the inner surface of at least one of the side walls is formed to reduce the dimension of the upper opening of the crate in at least one selected area at the first distance from the bottom surface so as to provide a tighter fit with a drag rail of an identical crate stacked thereon.